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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No.

UNITED MINE WORKERS OF AMERICA: UNITED MINE WORKERS OF AMERICA, DISTRICT 23; EARL SUVER, AGENT, UNITED MINE WORKERS OF AMERICA AND ITS DISTRICT 23; ARTHUR CHANEY, AGENT, UNITED MINE WORKERS OF AMERICA AND ITS DISTRICT 23, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners, International Union, United Mine Workers of America, hereafter referred to as International Union, United Mine Workers of America District 23, hereafter referred to as District 23, Earl Suver, Agent, United Mine Workers of America and its District 23, Arthur Chaney,

Agent, United Mine Workers of America and its District 23, and each of them, pray that a writ of certiorari issue to review a decree of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on April 28, 1952 (R. 507). A petition for rehearing was denied September 5, 1952 (R. 535).

OPINION BELOW

The National Labor Relations Board's Decision and Order is reported at 92 N.L.R.B. No. 128.

The opinion of the Court of Appeals is reported in 195 F. (2d) 961.

JURISDICTION

The Circuit Court of Appeals entered its decree on April 28, 1952. A petition for rehearing was denied September 5, 1952 (R. 535).

The jurisdiction of this Court is invoked under Title 28, U. S. C. Sections 1254 (1) and 2101 (c) [Act of June 25, 1948, Chapter 646, 62 Stat. 928, 961, 962, amended May 24, 1949, Chapter 139, Section 106, 63 Stat. 104], and Section 10(e) of the Labor-Management Relations Act, 1947, (Act of June 23, 1947, Chapter 120, Title I, Section 101, 61 Stat. 146, amended June 25, 1948, Chapter 648, Section 32, 62 Stat. 991).

SUMMARY AND STATEMENT OF THE MATTER INVOLVED

Upon charges filed by four companies, namely, the West Kentucky Coal Company, the Colonial Coal Mining Company, Homestead Coal Company and the Badgett Mine Stripping Company, the Board issued its Complaint against the United Mine Workers of America, United Mine Workers of America District 23, Ed. J. Morgan, President of District 23, Earl Suver, Arthur Chaney, Agents, charging them with the commission of unfair labor practices within the meaning of Section 8 (b)(1)(A) of the Labor-Management Relations Act, 1947, hereinafter referred to as the Act.

Petitioners, herein, filed their Answer to the Complaint denying the commission of the unfair labor practices.

These cases were consolidated and, after a hearing, the Trial Examiner issued his Intermediate Report and Recommended Order (R. 61-113).[1] The General Counsel and the Petitioners herein filed their Exceptions to said Report (R. 114-126). The Board adopted the Trial Examiner's Report in its Decision and Order dated December 27, 1950 with certain modifications discussed hereinafter.

On May 24, 1951, the Board filed with the United States Court of Appeals for the Sixth Circuit its Petition for Enforcement of the Board's Order. In the Court of Appeals Petitioners, herein, contended, among other things, that, even if the Court concluded that the Petitioners had committed unfair labor practices, the Board's Order was too broad and that the Board had, thereby, exceeded its power and jurisdiction, and therefore the Order should be modified. On April 28, 1952, the Court issued its decree enforcing the order as prayed for. A petition for rehearing was denied September 5, 1952.

STATUTE INVOLVED

The pertinent provisions of the Labor-Management Relations Act, 1947, are set forth in the Appendix, infra, pp. 27-29.

THE FACTS AND THE BOARD'S FINDINGS

On June 29 and 30, 1949, a group varying in number from 1,000 to 2,500 persons went to six (6) non-union mines owned and operated by four coal companies.[2] All of these

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[1] Herein, "R" refers to the Transcript of Record and Proceedings, Before the Board and the Court of Appeals, filed with this Petition and Brief.

[2] The group visited the East Diamond, North Diamond, and Poplar Ridge Mines owned by the West Kentucky Coal Company. The Poplar Ridge Mine was subsequently sold to the Poplar Ridge Coal Company. The other mines were owned by the Homestead Coal Company, Colonial Coal Mining Company and the Badgett Mine-Stripping Coal Corporation (R. 65, 66).

mines were located in Western Kentucky. The group stayed at each mine from one to two hours and the entire activity in question covered only two days (R. 70).

At each of the mines visited Suver and Chaney, organizers for the Respondent Unions, asked or requested the management to close the mines down and to let them talk to the employees (R. 187, 213). At each of the mines visited, members of the Kentucky State Police were present in uniform. Also usually present was the Sheriff of the County and his Deputies (R. 198, 275). Frequently the State Police lead the group as they approached the mine (R. 335, 347, 398). After the employees were brought out of the mines, an area was selected for them to congregate to hear the speeches. The police stretched a tape to indicate the area for the employees to assemble (R. 255, 259, 277). After employees were assembled, Suver and Chaney then addressed the gathering. In these speeches the speakers told the employees they were out to organize each of these companies. They explained how the union had obtained new benefits for its members and how through the Union's efforts they (the employees) were receiving the benefits they then enjoyed. They told the employees to go home and stay there until their employers had signed a contract with the United Mine Workers of America (R. 426, 427, 432, 450 & 451). After the meetings were over the men left and the employees went home. There was no picketing nor did the group ever return to any of the mines. The happenings at each mine, in general, were as follows:

A. East Diamond Mine

At the East Diamond Mine, Suver and Chaney requested that the company call any employees working inside the mine out so that they could talk to them (R. 213). At the same time, Suver assured Cobb, General Superintendent of West Kentucky Coal Company, that they were on a "peaceful mission" (R. 214). The General Manager described the group as "It just looked like

they were there on a friendly visit . . . " (R. 217). Here the speakers told the employees that they wanted everybody to join the Union. They told the men "about the Welfare and things that these men didn't have that they would have with the Union" (R. 250). They told them that there would be a meeting at Jim Dunlap's and asked that all those who would come to join up with the Union to hold up their hands. When a few didn't hold up their hands, somebody yelled out, "Get them up, get them up you sons of bitches" (R. 250, 251). Chaney said that they would picket the mine twenty-four hours a day if necessary (R. 218). After the speeches were over, "everybody went peacefully out and without the parading and a lot of placarding" (R. 251). The group of so-called pickets left and the employees of the mine remained for a while but left the premises without returning to work (R. 266, 287).

B. North Diamond Mine

At the North Diamond Mine, practically the same pattern of events followed. The Personnel Director of the West Kentucky Coal Company described the scene as "quiet" (R. 182). The management was again assured by Suver that they were on a "peaceful mission" (R. 297) After consulting with the Sheriff of the County, the employees were brought out of the mine.

Suver addressed the men first. Suver told the employees they were there to organize the mine and wanted them all to join the union. He said the organizational drive would continue until the West Kentucky Coal Company had signed a contract (R. 184, 304). He told them he wanted them to go home and not to work anymore until they had a contract (R. 320). (Chaney made a similar speech.) He also asked them to hold up their hands to certify to the fact that they would not work until the West Kentucky Coal Company had signed a contract. The men held up their hands. He invited them to a meeting to join the

Union, (R. 184, 185) and told them to take their clothes home and wash the scabs out of them and not come back until they could have a contract to work (R. 320).

After the speeches were over the group left the property (R. 230). The employees just stood around and talked among themselves and then all went home (R. 299).

C. Homestead Mine

Again, at the Homestead Mine, Suver and Chaney requested the management to shut down the mine (R. 326). After consulting with the law enforcement officers, the management did shut it down (R. 327).

Again, the same type of speeches were made by Suver and Chaney. The employees were asked to raise their hands to indicate they would join the Union. When the men didn't hold up their hands there was a lot of profanity according to some of the witnesses (R. 328). Others only heard "booing" (R. 353). Someone in the crowd said, "Well I see right now we're going to have to come back after these scabby sons-of-bitches" (R. 337).

D. Poplar Ridge Mine

Here again the employees were called out of the mines under the same circumstances as in the previous mines.

At this mine occurred the only acts of violence. An employee, named Price, went to put his clothes and bucket in his car when several pickets caught him by the arm and shook him, booted him in the back and searched him (R. 359, 360). Another employee, Luther Curlee, tried to do the same thing. He was struck in the mouth (R. 360). The persons who committed these offenses were not identified in any manner. These incidents occurred before the speeches and each man had quit work or was preparing to quit work (R. 385, 388).

E. Badgett (Hecla Mine)

This mine strips coal from land leased by the Badgett Mine Stripping Corporation from the West Kentucky Coal Company. It operates through two subcontractors—the

Julia-Ree Corporation and Badgett Corporation. The operation is known as the Hecla Mine.

Only Suver made a speech at this mine. Chaney was not present when the management was requested to bring the men out for the speeches.

Suver, in his speech, told the men that they had not come to expend any violence on them (R. 449). He related the facts about the Union Welfare Fund and how the Union set-up was much better than the one they had. He also told of the benefits that they had gotten themselves because of the Union. Suver said they had assembled like this to show their strength and to help the employees to become organized. They had come to organize the West Kentucky Coal Company and all its branches (R. 480). He said he realized that their lease with the West Kentucky Coal Company would not allow the Company to operate as a union mine but they didn't have to worry about that because West Kentucky would also be union and that item would take care of itself (R. 450, 462, 469, 488, 489).

Suver then asked them how many would join the Union and stay away until they had gotten a contract. After they had held up their hands he told them to go on home and not come back until they got the contract (R. 475).

While Suver was speaking, Chaney was standing behind Rogers Badgett, General Manager of the Mine, cussing him. He told him what a "smart son-of-a-bitch" Badgett thought he was. A fellow out in the crowd said, "Arthur, you want me to pull the son-of-a-bitch's glasses off so you can hit him?" (R. 436). One witness heard Chaney remark, "I ought to, and hit him right in his God damned eyes. He got by with it once but this is one time he's not going to" (R. 478). It appears that Rogers Badgett tried to run over some of these men a year before at another location (R. 437).

After the speeches were over the employees and all of the group left. Some unidentified people cussd the men by referring to them as "scabby sons-of-bitches."

F. The Colonial Mine

The same pattern followed at this mine as the others when the group of some 2,000 men arrived. The employees of the Colonial mine were called out of the pits and Suver and Chaney made speeches (R. 396-400).

James Miner, President and General Manager of Colonial, in summing up Suver's speech, said that Suver ". . . started the speaking by telling us what his mission was, that they were out to unionize all of the non-union mines in the territory." He also dwelt on the history and background of the unionization of the West Kentucky field and how the Union had gotten the employees benefits (R. 400-401). All the other witnesses testified Suver said they were out to organize the mine (R. 414) or the field which one witness said he imagined meant, the Hopkins County field (R. 417). Another testified Suver said "that Company" (R. 432).

Suver told them they were on a peaceful mission. He told them of the benefits of the Union, about their Welfare benefits, hospitalization plans, and widow's benefits.

Chaney then spoke and asked for a show of hands of those that would go home and stay until the Company had signed a Union Contract and who would join the Union. After the employees raised their hands he then told them to go home and not to come back until that happened (R. 432).

THE BOARD'S DECISION AND ORDER

The Trial Examiner, in his Intermediate Report and Recommended Order (R. 61-113), found that the United Mine Workers of America, United Mine Workers of America District 23, Arthur Chaney, Earl Suver and Ed. J. Morgan, President of District 23, had committed an unfair labor practice within the meaning of Section 8 (b)(1)(A) of the Act. The Board sustained the Trial Examiner in his findings except that it dismissed the complaint insofar as it alleges that Ed. J. Morgan violated the Act. The Board also accepted the Trial Examiner's Recommended

Order, except that it broadened the Order so as to order the Petitioners not only to cease and desist from restraining and coercing the employees of the charging companies but also "any other employees engaged in mining operations within the geographical limits of the jurisdiction of District 23, United Mine Workers of America in the exercise of the rights guaranteed them by Section 7 of the Act . . ." (R. 131, 132). The Trial Examiner had refused the General Counsel's request for this broad order. The scope of the Order is further extended by Section (b) which orders the Petitioners to cease and desist from "In any manner restraining and coercing said employees or any of them . . ." (R. 128).

THE COURT OF APPEALS DECISION

Upon petition by the Board for enforcement of its Order, the Court of Appeals on April 28, 1952 issued its decision and its opinion which enforced the Order as prayed for (R. 507). The Court of Appeals said that in view of the fact that Suver stated that the union group was out to unionize all the non-union mines in the territory "we think this order was a proper exercise of discretion on the part of the Board."

The Court, in ignoring Petitioners' objections to consider the cases as a whole on the theory that if there was coercion at one mine that coercion could not be used to find coercion at another mine many miles away, found that Petitioners did violate Section 8 (b)(1)(A) of the Act. The Court said, "But we are more impressed by the incident considered as a whole than by specific acts of violence." The Court then cited the trespass on the property, forced cessation of work, threats of violence, and the presence of hostile men as reasons for their decision. The Petitioners contended that considering the record as a whole this finding is contrary to evidence and facts in the case.

The notice to be signed by each of the Petitioners is required to be posted not only at each of the mines involved

but also in each Local Union throughout District 23. None of said locals are parties to or involved in this action (R. 141, 142).

QUESTIONS PRESENTED

This case presents the following questions:

1. Whether that part of paragraph 1(a) of the Board's Order, as enforced by the Court, which requires Petitioners to cease and desist from restraining and coercing not only employees of the charging companies but "(a) . . . or any other employees engaged in the mining operations within the geographical limits of the jurisdiction of District 23, United Mine Workers of America in the exercise of the rights guaranteed them by Section 7 of the Act . . .", is too broad and whether it exceeds the Board's power, authority, and jurisdiction granted to it under Section 10(c) of the Act, and whether it should be modified and limited to the employees of the six (6) mines involved.

2. Whether Section 1(b) of the Board's Order as enforced by the Court which reads "(b) in any manner restraining and coercing said employees or any of them in the exercise of their right to refrain from any and all of the concerted activities guaranteed them by Section 7 of the Act," is too broad and, therefore, exceeds the Board's power, authority, and jurisdiction, and should be limited to the Board's finding of fact as to the methods used in committing the unfair labor practice.

3. Whether the Petitioners should be required to post the Board's Order at the designated places in the numerous Local Unions throughout District 23 or whether it should be limited to the designated posting places in District 23 and to the six (6) mines involved in the instant case.

4. Whether substantial evidence on the record as a whole supports the Board's and the Court of Appeal's findings

that Respondents restrained and coerced employees within the meaning of Section 8 (b)(1)(A) of the Act.

5. Whether the Board erred in permitting testimony covering acts alleged to have occurred in 1946; and in refusing the Petitioners herein to prove acts also occurring during that period to show bias, and explain the action of the employees at the time in question.

6. Whether the Court of Appeals for the Sixth Circuit erred as a matter of law in enforcing the Board's Order without modifications.

REASONS FOR ALLOWANCE OF THE WRIT

(1) Clearly, the combination of Section 1(b) and 1(a) of the Board's Order, as enforced by the Sixth Circuit, which imposes upon the Petitioners the Broad injunction to cease and desist from "In any manner restraining and coercing . . ." the ". . . employees engaged in mining operations within the geographical limits of the jurisdiction of District 23, United Mine Workers of America, in the exercise of the rights guaranteed them by Section 7 of the Act . . ." is of *vital importance to all labor organizations, their agents, and members.*

If this decree is permitted to stand it will furnish a pattern to be utilized against all labor organizations and their membership. This decree spreads a blanket over the entire activity of the Petitioners not to violate the statute. It places all activity under the threat of contempt of court. Congress did not prescribe that alleged violations of the statute shall be tried as contempt of court. Rather it prescribed, in Section 10(c) of the Act, the method by which such alleged violations were to be processed by and through the Board.

(2) This broad cease and desist order is condemned by and is in conflict with this Court's decision in *N.L.R.B.* v. *Express Publishing Co.*, 312 U.S. 426; *May Dept. Stores Co.* v. *N.L.R.B.*, 326 U.S. 376; and *N.L.R.B.* v. *Crompton-*

Highland Mills, Inc., 337 U.S. 217. It is also in conflict with decisions of other Circuit Courts of Appeals that have rejected orders which were even less in scope. See *Reliance Mfg. Co.* v. *N.L.R.B.*, 7 Cir., 125 F(2d) 311; *N.L.R.B.* v. *Ford Motor Co.*, 5 Cir., 119 F(2d) 326; *Shell Oil Co.* v. *N.L.R.B.*, 5 Cir., 196 F(2d) 637; *N.L.R.B.* v. *Consolidated Machine Tool Corp.*, 2 Cir., 163 F(2d) 376. All of these cases involve orders directed towards employees rather than labor organizations; but the issues involved are the same and if a different application of these is to be made to labor organizations then it is a new and important question of law which should be settled by this Court. The rights and privileges of labor organizations under this broad ruling should be delineated with as much definiteness as possible. It will have its impact on all processes and facets of collective bargaining.

Although the Trial Examiner rejected this broad order the Board said that in view of the fact that the Petitioners were out to organize the West Kentucky Coal Company and other Companies, and that one of the leaders stated "that they were out to unionize all the non-union mines in the territory" the Petitioners planned to apply the same technique to all other non-union mines. This reasoning is not justified by the record nor does the record afford a basis for such an extreme conclusion. The Circuit Court decided that in view of the fact that the Board "found that serious danger of future unlawful acts of restraint and coercion existed not only with respect to the six mines involved but also with respect to other non-union employees" in District 23, the order was a proper exercise of discretion on the part of the Board. The Circuit Court further stated that "The Board has broad power to determine the necessary scope of its orders . . ." We think this decision ignores this Court's pronouncement in *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, that reviewing courts must assume more responsibility for the reasonableness and fairness of Labor Board decisions.

WHEREFORE, Petitioners, and each of them, pray that a writ of certiorari be issued to the United States Court of Appeals for the Sixth Circuit to review the decree entered by said Sixth Circuit on April 28, 1952, and entitled on its docket as Number 11,406, *National Labor Relations Board* v. *United Mine Workers of America: United Mine Workers of America, District 23; Earl Suver, Agent, United Mine Workers of America and its District 23; Arthur Chaney, Agent, United Mine Workers of America and its District 23.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No.

UNITED MINE WORKERS OF AMERICA: UNITED MINE WORKERS OF AMERICA, DISTRICT 23; EARL SUVER, AGENT, UNITED MINE WORKERS OF AMERICA AND ITS DISTRICT 23; ARTHUR CHANEY, AGENT, UNITED MINE WORKERS OF AMERICA AND ITS DISTRICT 23, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

A. OPINION BELOW

The Opinion of the Court of Appeals appears on page 507 of the Transcript of Record. The Intermediate Report of the Trial Examiner appears on page 61 and the Board's Decision and Order appears on page 128 of the Transcript of Record. The Board's Decision is reported at 92 N.L.R.B. No. 128. The Court of Appeals' Decision is reported at 195 F. (2d) 961.

B. JURISDICTION

The Circuit Court of Appeals entered its judgment and decree on April 28, 1952. Petition for Rehearing denied on September 5, 1952 (R. 535). The jurisdiction of this Court is invoked under Title 28, U.S.C. Sections 1254 (1) and 2101 (c) [Act of June 25, 1948, Chapter 646, 62 Stat. 928, 961, 962, amended May 24, 1949, Chapter 139, Section 106, 63 Stat. 104], and Section 10(e) of the Labor-Managemen Relations Act, 1947, [Act of June 23, 1947, Chapter 120, Title I, Section 101, 61 Stat. 146, amended June 25, 1948, Chapter 648, Section 32, 62 Stat. 991].

C. STATEMENT OF THE CASE

A statement of the case appears in the preceding Petition for Writ of Certiorari (pp. 3-9) which is hereby adopted and made a part of this Brief.

D. SPECIFICATIONS OF ERRORS

1. The Court of Appeals erred in ordering the enforcement of paragraph 1(a) of the Board's Order, and in failing and refusing to order that the provisions of said paragraph concerning all other employees within the geographical limits of the jurisdiction of District 23 be stricken so as to modify the paragraph limiting the Order to the employees of the coal companies involved in the case.

2. The Court of Appeals erred in ordering the enforcement of paragraph 1(b) of the Board's Order, and in refusing to limit the Order to the specified unfair labor practices involved in the case.

3. The Court of Appeals erred in failing to refuse to enforce the Board's Order on the grounds that said Order is not supported by the record considered as a whole; and, further, the Trial Examiner committed prejudicial error in refusing to permit Respondent's testimony concerning the background of the activities and in permitting the Board to introduce testimony of events occurring in 1946.

E. ARGUMENT

1. The Blanket Order Contained in paragraph 1(a) and (b) of the Board's Order Is Not Warranted by the Board's Findings of Fact or by Substantive Evidence on the Record Considered as a Whole. It Is Contrary to Law, and Beyond the Board's Jurisdiction and Power. The Decree Enforcing It Conflicts With Applicable Decisions, Both of This Court and Other Courts of Appeals. The Court Erred in Enforcing It.

The Board's Order is not limited to the employees alleged to have been "coerced and intimidated" in the Complaint and as recommended by the Trial Examiner (R. 107), but it is extended so as to order the Petitioners to cease and desist from restraining and coercing ". . . any other employees engaged in mining operations within the geographical limits of the jurisdiction of District 23, United Mine Workers of America . . ." (R. 131).

This sweeping Order is not warranted by the facts. The Board based its decision upon the fact that the Petitioners' stated purpose was to organize those companies (charging parties) and that it would be continued until they were all organized. Also, that one witness testified that one of the leaders stated "that they were out to unionize all the non-union mines in the territory." The Board concluded from this that it believed from these incidents that they "were the beginning of a planned program to apply the same techniques to all the non-union mines within the organizing jurisdiction of District 23, which is, in general, that part of the State of Kentucky west of a line running north and south through Louisville, Kentucky (R. 130).

In the first place, the evidence in the record will not substantiate the factual conclusions of the Board. Secondly, even if the record did, these facts would not warrant such a broad and harsh Order.

As to the evidence regarding the extent of these activities it must be kept in mind, in order to have a proper perspective, that the acts complained of occurred within one to two hours at each of the six mines, actually owned by four

coal producing companies (R. 65, 66). Five of these mines are located in Hopkins County, and the sixth in Union County, adjacent to Hopkins County (R. 70). The Union County mine was owned, at the time in question, by the West Kentucky Coal Company which owns the two other mines, namely, the East Diamond Mine and the North Diamond Mines. The West Kentucky Coal Company also controlled the Badgett Strip Mining Corporation by leasing the stripping rights to Badgett (R. 450). Thus, these activities were confined to an extremely short period of time, over a small area, and to a small pocket of non-union economic strength.

Of course, one of the main objects of organized labor is to organize as many employees as possible. Therefore, when the speakers announced such a purpose it was not startling. The Board is not justified in using this declaration of policy as a basis to conclude that this particular group intended or was embarked on a move "to apply the same techniques to all non-union mines" in the western half of the State of Kentucky (R. 130). Nor does the additional fact that one of the speakers stated "that they were out to unionize all the non-union mines in the territory" justify the Board's conclusions. In the first place, the evidence is conclusive that the speaker did not say this but, taking the testimony of all the witnesses, except one, it seems clear that the speaker said they were out to organize the particular companies in question and other companies (R. 432, 480) or territory (R. 400). Even if the speaker did use the word *territory* it seems clear that the understanding of the people involved was that the territory was the Hopkins County field (R. 417).

Also, since there was not a continuation of this activity elsewhere, or even at the mines involved, the Board's conclusions are not supported by substantial evidence on the record considered as a whole. To the contrary, the Board has taken isolated statements from the record, out of context, to justify this harsh Order—giving it a full sweep—

to place all the activities of the Petitioners under the heavy hand of contempt of court.

This is foreign to the contemplation of Congress. Congress set forth in Section 10 of the Act the procedure by which unfair labor practice cases were to be processed. Section 10 provides that alleged unfair practices are to be processed first through the Board and then be petitioned to the Circuit Court of Appeals for enforcement of its decision and order. This Court, in *N.L.R.B.* v. *Express Publishing Co.*, 312 U.S. 426, 435, declared that, "Congress did not contemplate that the courts should, by contempt proceedings, try alleged violations of the National Labor Relations Act not in controversy and not found by the Board and which are not similar or fairly related to the unfair labor practice which the Board has found." If this new doctrine of the Board is permitted to be established, then the entire activity of the Petitioners shall be placed under the threat of contempt. The *Board can then apply this doctrine to all other labor organizations that may be found guilty of committing an unfair labor practice.*

This Court has also rejected broad cease and desist orders when sought against employers and has declared that a "decree of enforcement should not extend further than necessary to prevent the taking of the prohibited action by the employer." *N.L.R.B.* v. *Crompton-Highland Mills, Inc.*, 337 U.S. 217, 226. The Petitioners contend that this Court should review the Board's efforts to enlarge the scope of its orders against labor organizations so that all of them may have a clear delineation of their rights under the Act. If this doctrine is permitted to stand, the passage of time will bring more and more upon the courts the burden of trying alleged unfair labor practices in the initial proceedings. The Fifth and Seventh Circuits have rejected the Board's attempts to apply these sweeping general injunctions against employers. In *N.L.R.B.* v. *Ford Motor Company*, 5 Cir., 119 F. (2d) 326, the Court found the Board without jurisdiction to make an order broader than

the subject matter in the Complaint. The Seventh Circuit in the case of *Reliance Mfg. Co.* v. *N.L.R.B.*, 125 F. (2d) 311, 322, again refused enforcement of a broad order against employers. It stated, "Furthermore, we think that Petitioner, if it, at some future time, should be charged with an unfair labor practice at a plant or plants not included in the instant proceeding, would be entitled to a hearing before the Board rather than this Court in a contempt proceeding." See also *N.L.R.B.* v. *Consolidated Machine Tool Corp.*, 2 Cir., 163 F. (2d) 376, where the Second Circuit restricted the order to the employer's pattern and maker employees.

Therefore, paragraph 1(a) of the Board's Order should be limited to the employees of the charging companies involved.

The scope of this Order is further extended by Section (b) which orders the Petitioners to cease and desist from: "In any manner restraining and coercing said employees or any of them, in the exercise of their rights to refrain from any or all of the concerted activities guaranteed them by Section 7 of the Act" (R. 132).

Thus, the combination of Sections (a) and (b) of the Order, spreads over the Petitioners a full blanket not to violate the Act. Reduced of all the verbiage, the Order is to cease and desist from in any manner restraining or coercing any employees engaged in mining operations within the jurisdiction of District 23, in the exercise of the rights guaranteed them by Section 7 of the Act. No greater degree of *government by injunction* can be devised.

This Court, in *N.L.R.B.* v. *Express Publishing Co.*, 312 U.S. 426, 437, declared:

> "To justify an order restraining other violations, it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past."

There is nothing in this record to justify placing the Petitioners under such terrific restraint and if this doctrine

is permitted to stand then other labor organizations will be placed under the same restraint. The words of the court in *Russell C. House Transfer & Storage Co.* v. *U.S.*, 5 Cir. 189 F. (2d) 349, 351, seem appropriate. The court said:

> "Basic in the law is the principle that no decree should be so broad as to place the entire conduct of one's business under the jeopardy of punishment for contempt for violating a general injunction."

If there be any order at all, it should be restricted to the acts complained of and to the employees of the charging companies.

2. The Court of Appeals' Decree Enforcing the Board's Order Is Erroneous Because Said Order Is Not Supported by Substantial Evidence on the Record Considered as a Whole.

The Petitioners contend that the Board and the Court of Appeals erred in considering these cases as a whole. The Petitioners had no objections to consolidating these cases for the purpose of avoiding unnecessary costs and delays. But the Petitioners contend that each case should be considered separately as to the facts in determining whether or not any of the acts constituted an unfair labor practice.

Petitioners urge this Court to reject this type of consolidation and urge that it base its decision upon the happenings in each individual mining company on the basis that any acts committed in the Badgett Mine, for example, does not constitute an unfair labor practice against the employees of the East Diamond Mine of the West Kentucky Coal Company.

The evidence shows that the meetings held in the East and North Diamond Mines of the West Kentucky Coal Company were free from any personal violence or any threats of violence. Ray Cobb, Superintendent of the West Kentucky Coal Company, testified that Suver informed him that the group was on a peaceful mission (R. 213).

After it had been agreed that the employees be called out of the mine for the speeches, Suver and Chaney demonstrated this peaceful intention by agreeing to Cobb's suggestion that they see that the group of men be backed away from the portal so that the employees coming out of the mine would not get excited (R. 215). Cobb described the whole scene as "It just looked like they were on a friendly visit . . ." (R. 217). Edwin McGaw, Personnel Director of the West Kentucky Coal Company, described the men as being quiet (R. 182). After Suver and Chaney made their speeches in which they urged the employees to join the Union and to refrain from working until their employers had negotiated a contract, the men left the property before the employees. The employees remained at the mine for a while but left the premises without returning to work (R. 266, 287).

There were no pickets left at the entrance nor did this group of men ever return. In fact, many of the men had already quit work and had taken baths before the Union group arrived (R. 256, 257, 259).

It should be remembered that at all times officers of the law enforcing agency were present (R. 74, 79, 80, 82, 85, 89, 90 and 93). None of the officers saw fit to make a single arrest. A great deal of emphasis was placed upon the fact that a piece of tape was stretched in a circle indicating where the employees of the charging companies were to stand to hear the speeches. The testimony conclusively shows that this tape was provided by Capt. Jones of the Kentucky State Police and that it was stretched about by him and he indicated that the employees should go inside this inclosure. (R. 32, 216, 231, 284). They were not forced inside this area by the Union group to prevent them from escaping as suggested in the Court's opinion. Willie Davis testified that he did not go inside the tape (R. 270) but that he crowded as close as he could to hear what was said (R. 270, 271). The fact of the matter is the group assembled as any other group would assemble to hear a speech.

There is no doubt that there was a large group of men assembled at these mines. However, this is no basis for an unfair labor practice charge. Although there was no picketing of the mines, it is somewhat analogous to the situation referred to "mass picketing." This has never been held illegal as such. It is only where the purpose of such mass picketing is to block ingress or egress to the premises that it has been held illegal. The mere fact of large numbers of men present cannot be regarded as restraint or coercion within the meaning of Section 8 (b) (1) (A) of the Act. Cory Corp., 84 NLRB, 110.

The record reveals that members of the Union group referred to the employees as "scabs" and "Scabby sons of bitches." This type of thing has been referred to as a name-calling issue. As a general rule, the Board has held that name-calling is a privileged union activity, therefore, one protected by the Act.

In the International Longshoremens' & Warehousemens' Union Case, 79 NLRB No. 207, the Board held that name-calling of this type could not be an unfair labor practice because of Section 8 (c) of the Act which provides that:

"The expressing of any views, arguments, opinions, or the dissemination thereof, whether in written, printed, graphic, or visional form, shall not constitute or be evidence of an unfair labor practice under any provisions of this Act if such expression contains no threat of reprisal or force, or promise of benefit."

The record discloses only two acts of physical violence (R. 359, 360). This occurred at the Poplar Ridge Mine. These acts cannot be the basis for an unfair labor practice charge against either the Union or the individual named defendants. There was no evidence that the Union or its agents participated in or ratified these acts. The mere fact that a Union agent was present near the scene does not make the Union responsible. Perry-Norvell Co., 89 NLRB No. 47. In the International Longshoremens' and

Warehousemens' Union Case, 79 NLRB No. 207, the Board laid down those fundamental rules of the law of agency which it believed controlled on the issue of union responsibility. First, the burden of proof is on the party asserting agency relationship, both as to the existence of the relationship and as to the nature and extent of the agent's authority. The record is void of any evidence that the acts of violence occurring at the Poplar Ridge Mine were committed by an agent of the petitioning Unions. The fact that the acts may have been committed by a rank and file member of the United Mine Workers of America is not enough to establish agency. However, the record does not even disclose that these acts of violence were committed by even a member of the petitioning Unions. Therefore, neither the petitioning Unions nor the individual Petitioners can be held responsible for the acts of violence against Price and Curlee.

We do not think it was the intention of Congress to make labor organizations responsible for all the acts of all individuals participating in a labor dispute without substantial evidence that the person was acting as an agent of the Union, and the Petitioners further believe that it was improper for the Board to infer agency from the fact that there was a labor dispute and other proven agents were participating in it. Certainly, these Petitioners should not be saddled with the irresponsible acts of unknown persons who may or may not have been Union members. If a Union is to be held guilty of illegal acts committed by unknown and unidentified persons, it cannot defend itself.

Therefore, Petitioners contend that the Board's Order is not based upon substantial evidence on the record considered as a whole and that the Court of Appeals erred in enforcing said Order.

3. The Circuit Court of Appeals Erred in Enforcing the Board's Order Because the Trial Examiner Committed Prejudicial Error in Permitting the Board to Introduce Testimony Concerning Events Occurring in 1946, and in Refusing to Allow Petitioners to Cross-Examine Witnesses Concerning the Background of the Charging Companies Anti-Labor Activities.

The Petitioners contend that the Circuit Court of Appeals erred in enforcing the Board's Order and in refusing to send the case back to the Board for further hearing because of the prejudicial testimony permitted in the record.

The Petitioners contend that it was prejudicial error to permit testimony concerning events that occurred in 1946. (R. 232, 235). There were no allegations in the Complaint concerning any acts alleged to have occurred in 1946, and Counsel for the Petitioners were not aware of any of these events; therefore, it was impossible to properly cross-examine witnesses on this point.

Furthermore, the Trial Examiner and the Board made these events part of the unfair labor practice even though they occurred prior to the passage of the Act and were not incorporated in the Complaint (R. 71, 72). Petitioners contend that this error was aggravated by the refusal to permit testimony that the charging companies and their supervisors had a background of opposition to organized labor and active opposition to the petitioning Unions. (R. 200-202). Such evidence would have clearly demonstrated the hostility of the witnesses to the Petitioners. A great deal of testimony was given by company officials and supervisors and evidence of their hostility was proper to show bias and prejudice.

CONCLUSION

For the reasons hereinabove set forth, it is submitted that the petition for Writ of Certiorari should be granted as prayed for, and that this case should be reviewed by this Court.

Respectfully submitted,

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APPENDIX

Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136 et seq.):

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3) of this title. (29 USCA, 1951 Cum. An. Pkt. Pt., Section 157; 61 Stat. 140).

UNFAIR LABOR PRACTICES

Section 8.

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 of this title: *Provided,* That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

* * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10.(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 of this title) affecting commerce. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action . . . as will effectuate the policies of this subchapter; * * *

(e) The Board shall have the power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the United States courts of appeals to which applications may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of

extraordinary circumstances. • • • The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of Title 28. (29 USCA. 1951, Cum. An. Pkt. Pt., Section 160(e); 61 Stat. 146; Act June 25, 1948, c. 648, Sec. 32, 62 Stat. 991).

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